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Office of General Counsel

Liability of Government Employees for Negligence

STATINTL

1. At the request of [redacted] the following questions concerning the liability of an employee of the OSS for damages resulting from an automobile accident caused by his own negligence while acting in the scope of his employment were checked:

(a) whether any Congressional act exonerated Federal employees from liability to third parties under such circumstances;

(b) whether Congress had by special act relieved individual employees from such liability.

2. With regard to the first point, a general statute authorized heads of Federal departments to adjust claims for damages to private property not exceeding $1000, caused by the negligence of any officer or employee acting within the scope of his employment (31 U. S. C. 215). The Secretary of State has similar powers to settle claims arising from the "act or omission" of United States officers or employees in territories where the United States has extraterritorial jurisdiction (31 U. S. C. 224a). The Postmaster General may specifically settle even those claims (up to $500 in amount, arising from the negligence of Post Office employees acting in the scope of their employment (31 U. S. C. 224c). The Attorney General can also settle claims against FBI agents, who were not acting in the scope of their employment (31 U. S. C. 224b). On the other hand, the Secretary of War cannot settle claims arising from the negligence of War Department employees (31 U. S. C. 223b; see also D. C. Code, Sec. 1-902 (20:1037). It will be noted that none of these statutes relieve the employee of any personal liability for his negligence to a person injured thereby.

3. A recent Supreme Court decision reaffirms the principle that even public instrumentalities or public officers are individually liable as agents for their own negligence. Brady v. Roosevelt SS Co., 317 U. S. 575, 87 L. Ed. 471, 63 Sup. Ct. 425, rev. 126 F (2d) 169, certiorari granted 317 U. S. 609, 63 Sup. Ct. 54, 87 L. Ed. 495, certiorari denied Roosevelt SS Co. v. Brady,

319 U. S. 763, 63 Sup. Ct. 1320, 87 L. Ed. 1714, rehearing denied, 318 U. S. 799, 63 Sup. Ct. 859, 87 L. Ed. 1165 (1942). In that case the administratrix of the estate of a customs official who was killed as the result of the breaking of a defective rung in a ladder while boarding a vessel operated for the United States Maritime Commissioner, its owner, by the Roosevelt SS Co., a private agency, sued the steamship company for damages under the Suits in Admiralty Act. It was originally held that a maritime tort was involved; that under the act the remedy was exclusively against the United States or the United States Maritime Commission. The Supreme Court reversed this, holding that the intention of the Act was merely to prevent the United States shipping from being tied up by a libel in rem, and not to deprive the liability of private agents for their torts. Mr. Justice Douglas said:

> "The liability of an agent for his own negligence has long been embedded in the law. Quinn v. Southgate Nelson Co., 121 F (2) 190, is a recent application of that principle to a situation very close to the present one. But the principle is an ancient one and applies even to certain acts of public officers or public instrumentalities. As stated in Sloan Shipyards Corp. V. Emergency Fleet Corp., 258 U. S. 549, 567, 'An instrumentality of government he might be and for the greatest ends, but the agent, because he is agent, does not cease to be answerable for his acts.'"

4. The same principle is affirmed by implication in 15 C. G. 927 (1936). In that case an employee of the Bureau of Entomology and Plant Quarantine wrecked a Government automobile to such an extent that after repairs and sale the net loss to the Government was $58.50, which was decided to be chargeable to the employee. The accident, however, occurred at a time when the employee was not on official business. In 14 C. G. 281 (1934), an indorser bank refused liability on a check cashed to an imposter, charging the Government with laches, but it was decided that laches might not be charged against the sovereign, and that the Government is not liable for the nonfeasance, misfeasance or negligence of its officers, citing Cooke v. U. S., 91 U. S. 389, 398, German Bank v. U. S., 148 U. S. 573, 579. In 15 C. G. 503 (1940), discussing the liability of the WPA for damage to private property caused by the negligence of WPA workers acting in the scope of their employment, it is stated, that "in the absence of a specific statutory provision the Government is not liable for loss or damages resulting from the negligent act of its officers or employees", citing the German Bank case. Further, the necessity for Sec. 28 of the

Emergency Relief Appropriation Act of 1939 and Sec. 20 of the Act of 1938, allowing WPA Commissioner and New York Administrator to adjust claims up to $500. It would seem to follow that in the absence of contrary legislation, government employees remain liable to third persons injured by their torts.

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5. With regard to [redacted] second point, there appear to be no private congressional acts relieving Federal employees from liability in cases where the Government had settled claims arising from their negligence, or in cases where judgments had been obtained against them personally. There are numerous private acts compensating private individuals for injuries suffered as the result of negligence of government employees. See for instance the Act of April 14, 1937 (Ch. 83, Sec. 420, Private 27), paying $5000 to one A. D. Hampton for the death of a child killed by an automobile operated by a CCC employee, who is neither named nor relieved. See also the Act of April 15, 1937 (Ch. 96, Sec. 318, Private 39), awarding $2500 to Edward and Aurelia Garcia for damages caused by a CCC truck driven by John House; there is no act relieving House whatever.

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